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12 CREDIT ACCEPTANCE CORPORATION

13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 LUZ BOYD-MALONE and MICHAEL
MALONE,

16 Plaintiffs,

17 vs.

18 CREDIT ACCEPTANCE
19 CORPORATION and Does 1 through
20 100,

21 Defendants.

Case No. '13CV2023 WQHNLS
Hon.
Ctm.

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1331
(FEDERAL QUESTION) AND
§ 1332 (DIVERSITY
JURISDICTION)**

Action Filed: July 26, 2013
Removed:
Trial Date: None Set

22
23 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**
24 **THE SOUTHERN DISTRICT OF CALIFORNIA, PLAINTIFFS,**
25 **PLAINTIFFS' COUNSEL OF RECORD, AND ALL OTHER INTERESTED**
26 **PARTIES:**

27 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1331, 1441, and
28 1446, Defendant Credit Acceptance Corporation removes the above-captioned

1 action from the Superior Court of the State of California, County of San Diego, to
2 the United States District Court, Southern District of California. Defendant is
3 entitled to removal pursuant to 28 U.S.C. § 1331, based on federal question
4 jurisdiction, and 28 U.S.C. § 1332, based on diversity of citizenship, as follows:

5 1. On July 26, 2013, an action was commenced in the Superior Court of
6 the State of California in and for the County of San Diego entitled *Boyd-Malone, et*
7 *al. v. Credit Acceptance Corp.*, as Case No. 37-2013-00059554 (the “State Court
8 Action”). Plaintiffs assert claims for (1) Violations of the Rosenthal Fair Debt
9 Collection Practices Act (CCC Section 1788-1788.33), (2) Violations of the
10 Telephone Consumer Protection Act (47 U.S.C. §227 et seq.), and, (3) “Intrusion”
11 (*sic*). Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders
12 served upon or by Defendant in the State Court Action, including summons and
13 complaint, are attached to this Notice as Exhibit A.

14 2. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and Fed.
15 R. Civ. P. 6(a)(3) because the State Court Action was served on August 1, 2013.
16 Therefore, this notice of removal is filed within thirty days after service and within
17 one year of the original filing of the complaint.

18 3. This Court has subject matter jurisdiction over this action and all claims
19 asserted against Defendant pursuant to 28 U.S.C. §§ 1331 and 1332(a), and removal
20 is proper pursuant to 28 U.S.C. § 1441.

21 4. Venue in this Court is proper pursuant to 28 U.S.C. §§ 84(c) and
22 1441(a) because the United States District Court for the Southern District of
23 California is the federal judicial district and division embracing the Superior Court
24 of California in and for the County of San Diego, where the State Court Action
25 originally was filed.

26 5. Pursuant to 28 U.S.C. §§ 1446(d), Defendant is filing this notice of
27 removal with this Court, serving a copy of this notice upon Plaintiffs, and filing a
28 copy in the Superior Court of California for the County of San Diego.

Federal Question

6. The Complaint names a claim for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”). The claim therefore presents a federal question within the meaning of 28 U.S.C. § 1331, as it arises under the laws of the United States. *See Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 753 (2012) (*holding* federal courts have original jurisdiction to hear TCPA claims pursuant to 28 U.S.C. § 1331.)

Diversity of Citizenship

7. The Defendant and Plaintiffs in this matter are citizens of different states. Plaintiffs are and at all times relevant were citizens of California. See Complaint ¶5.

8. Credit Acceptance Corporation is, and at all times relevant was, a citizen of the state of Michigan, where it was and is incorporated, and where it had and has its principal place of business.

9. The only other defendants named in the Complaint are fictitiously named defendants. According to 28 U.S.C. § 1441(a), for removal purposes, “the citizenship of defendants sued under fictitious names shall be disregarded.”

Amount in Controversy

10. Plaintiffs seek, at a minimum, \$210,000 under their TCPA claim, as they seek \$1,500 per separate alleged violation and claim at least 140 separate violations occurred. *See* Compl. ¶17. Plaintiffs seek additional damages for alleged violations of the Rosenthal Fair Debt Collection Practices Act, and for intrusion. Therefore, the amount in controversy requirement is satisfied. *See* 28 U.S.C. § 1332(a).

